

UNITED STATES DISTRICT COURT

for the

Northern District of California

FILED

Dec 01 2020

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO

United States of America

v.

Marc Nunez

Case No.3:20-mj-71753 MAG

*Defendant(s)***CRIMINAL COMPLAINT**

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of June 18, 2020 in the county of San Francisco in the
Northern District of California, the defendant(s) violated:*Code Section*

18 USC § 2252(a)(4)(B), (b)(2)

Offense Description

Possession of Child Pornography

Maximum penalties: 10 years in prison; \$250,000 maximum fine; 3 years' supervised release; \$100 special assessment.

This criminal complaint is based on these facts:

See attached affidavit of HSI Special Agent Christine Brital.

☐ Continued on the attached sheet.Approved as to form /s/ Ankur Shingal
AUSA

s/

Complainant's signature

HSI Special Agent Christine Brital

Printed name and title

Sworn to before me by telephone.

Date: 11/30/2020City and state: San Francisco, CA*Judge's signature*

Hon. Joseph C. Spero, Chief U.S. Magistrate Judge

Printed name and title

Print

Save As...

Attach

Reset

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Christine Brital, a Special Agent with the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), Homeland Security Investigations (HSI) in San Francisco, California, being duly sworn, depose and state as follows:

INTRODUCTION

1. I make this affidavit in support of a Criminal Complaint and Arrest Warrant charging **Marc NUNEZ** with possession of child pornography, in violation of Title 18, United States Code § 2252(a)(4)(B), (b)(2).

2. In connection with my official duties, I have participated in the investigation of **NUNEZ** for possessing child pornography on or about June 18, 2020. In connection with my official duties, I have obtained the following information from my investigation. Due to my personal participation in this investigation, I am familiar with the facts and circumstances of this case. My experience as an HSI Special Agent and my participation in this investigation form the basis of the opinions and conclusions set forth below.

3. Because this affidavit is submitted for the limited purpose of this criminal complaint, I have not included each and every fact known to me about this investigation. Rather, I have set forth those facts that I believe are sufficient to establish probable cause that **NUNEZ** committed the aforementioned offense.

AGENT BACKGROUND

4. I have been employed as a Special Agent with ICE since March 2003. Prior to my position with ICE, I was a Special Agent with the United States Customs Service from October 2001 until March 2003. I am currently assigned to the Special Agent in Charge, San Francisco,

where it is my primary duty to investigate individuals involved in the sexual exploitation of minors.

5. I have personally participated in the execution of numerous search warrants, including the search, seizure, and analysis of data stored within a computer and other electronic media. I have received various training in investigating and enforcing federal child pornography and exploitation laws in which computers are used as the means for receiving, transmitting, distributing, storing, and possessing images of minors engaged in sexually explicit conduct.

APPLICABLE STATUTES

6. Title 18, United States Code, Section 2252(a)(4)(B) prohibits any person from knowingly possessing any visual depiction that has been mailed, or has been shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce, or which has been produced using materials which have been mailed or so shipped or transported, by any means including a computer if (i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and (ii) such visual depiction is of such conduct.

FACTS ESTABLISHING PROBABLE CAUSE

7. On or about August 27, 2019, Homeland Security Investigations (HSI) San Francisco, California executed a federal search warrant for the residence of an individual (hereinafter, the "SUBJECT") for crimes related to the sexual exploitation of children. Several items were seized and examined from his residence, including an Apple iPhone Model A1688 belonging to the SUBJECT. Located in the aforementioned iPhone was a contact for Marc NUNEZ, which listed a telephone number for NUNEZ ending in 8047 and an address for

NUNEZ located on Beverly Street. The contact showed a created date of March 11, 2015, and last modified date of December 21, 2018. In addition, law enforcement identified a conversation between NUNEZ and the SUBJECT between October 4, 2018, and July 31, 2019. The conversation, in part, on July 31, 2019, is as follows:

- NUNEZ: Send yours ;)
- SUBJECT: [IMG_1686.MOV is a video file that depicts an age difficult male being anally sodomized by an adult male. The video only depicts the torso down of the males and primarily focuses on the sodomy. The video lasts approximately thirty-eight seconds.]
- SUBJECT: [IMG_1685.MOV is a video file that depicts an age difficult male that the SUBJECT identified as MINOR VICTIM 12 (V12).¹ The video lasts approximately 1:12 minutes and depicts V12 lying on a bed being sodomized by the SUBJECT (per the SUBJECT's statement to law enforcement on February 21, 2020).]
- NUNEZ: That the 15yr?
- SUBJECT: Ya
- SUBJECT: Oh no that's a 16yr old
- NUNEZ: I'll look in a bit ;)
- NUNEZ: Oh okay still hot lol
- NUNEZ: Lucky you

¹ The minor male's identity is known to law enforcement but will be referred to as MINOR VICTIM 12 or V12 to maintain the anonymity of the minor. On July 31, 2019, V12 was 17 years of age.

8. On February 21, 2020, during an interview with law enforcement, the SUBJECT identified NUNEZ in a photograph found in a conversation between the SUBJECT and NUNEZ on the SUBJECT's cellular telephone. The SUBJECT provided information that NUNEZ was someone whom he traded files with, including sexually explicit files of children, and was sexually interested in minors as young as 10. The SUBJECT added that he learned that NUNEZ worked for Grace Cathedral School for Boys as a substitute teacher and an after school helper. The SUBJECT stated that NUNEZ resides in the Sunset area (or near) in San Francisco and the last time the SUBJECT was at NUNEZ's residence was over a year prior to the interview.

9. Also, during the February 21, 2020, interview, the SUBJECT was shown a screenshot of a sexually explicit video file (**IMG_1685.MOV**) that he sent to NUNEZ on July 31, 2019. The SUBJECT identified the individual whose face appeared in the screenshot, both verbally and in writing, as V12's first and last name and initialed and dated the document. In addition, the SUBJECT added "video made with myself." The SUBJECT recognized the image from a video the SUBJECT made at the SUBJECT's residence. The SUBJECT identified himself, when asked, as the individual anally sodomizing V12 in the video. The SUBJECT was asked when the video was created with V12. Although unable to remember clearly, the SUBJECT believed it was in the middle of 2019. When asked, the SUBJECT stated he sent this video to NUNEZ, V12, and "possibly/probably" other people, though he does not remember who. The SUBJECT believed the file was most likely sent over Snapchat or WhatsApp.

10. Records from California Department of Motor Vehicles revealed Marc Anthony NUNEZ has a valid driver's license which lists an application date of February 19, 2019, and does not expire until April 10, 2024. The address for NUNEZ is listed as the same address house

number on Beverly Street found in the SUBJECT's cellular telephone which is located in San Francisco, California. An image of NUNEZ was also obtained from California Department of Motor Vehicles and appears to be the same individual as the image confirmed by the SUBJECT to be Marc NUNEZ.

11. On February 22, 2020, I queried Grace Cathedral School for Boys (<https://www.cathedralschool.net/>) and found a directory of staff. Upon examination, in the "Extended Day" portion of the directory, Marc NUNEZ was identified as a staff member. NUNEZ appeared to be the same individual previously identified by the SUBJECT on February 21, 2020. On November 16, 2020, I again viewed the directory for Grace Cathedral School for Boys, and Marc NUNEZ was listed as a Kindergarten Assistant.

12. On or about June 18, 2020, Homeland Security Investigations (HSI) San Francisco, California executed a federal search warrant for the residence of Marc NUNEZ located on Beverly Street in San Francisco, CA for crimes related to the sexual exploitation of children. During the execution of the federal search warrant law enforcement spoke with NUNEZ. After Miranda warnings were provided, NUNEZ was shown a conversation between the SUBJECT and NUNEZ between October 4, 2018, and July 31, 2019. NUNEZ confirmed that his telephone number ended in 8047 and was the same number found in the SUBJECT's cellular telephone. NUNEZ was asked if he recalled the conversation and he claimed, "not really." I mentioned that in the conversation NUNEZ and the other individual appear to "hook-up" and asked if that limited the possibilities of who the other person maybe. NUNEZ claimed, "I don't even know who this is."

13. NUNEZ was also shown a screenshot of a sexually explicit video involving V12

and the SUBJECT. NUNEZ stated, “looks familiar, not really.” NUNEZ claimed not to remember it. I explained that this screenshot was taken from a video that was sent to him on July 31, 2019, which was illustrated in the chat correspondence noted in paragraph seven above. I continued reading the chat between NUNEZ and the SUBJECT including NUNEZ asking if “[t]hat the 15yr?” and the SUBJECT responding “[y]a” followed by “[o]h no thats a 16yr old.” NUNEZ then responded, “I’ll look in a bit ;)” followed by “[o]h okay still hot lol” and “[l]ucky you.” NUNEZ still claimed it did not sound familiar to him. NUNEZ was asked to explain why he was discussing a 15 and 16 year old. I disclosed that V12 was a minor and confronted NUNEZ with the fact that he (NUNEZ) had known that as well. NUNEZ acknowledged that it did not sound great. NUNEZ later admitted that he was corresponding with “an old friend” and provided the SUBJECT’s name. NUNEZ claimed the SUBJECT was an old hook-up of NUNEZ’s. NUNEZ was asked if he and the SUBJECT shared an interest in the 15-16 year old range. NUNEZ responded, “we did but we stopped” and added “it was a mistake.” When asked how long the mistake happened, NUNEZ claimed not to know and then stated that he stopped.

14. NUNEZ was asked how often he received and possessed child pornography. NUNEZ claimed he received files mostly from the SUBJECT, but that the SUBJECT had stopped sending those files. NUNEZ believed the SUBJECT stopped sending files around the time the SUBJECT was moving.² NUNEZ also admitted receiving child pornography from another individual whom NUNEZ identified by name.

15. NUNEZ also admitted to receiving and possessing sexually explicit images from

² The SUBJECT previously resided in Alameda, California, but moved out of the area after law enforcement executed a federal search warrant at his residence in August of 2019.

minors in the past. NUNEZ mentioned an individual, SUSPECTED MINOR VICTIM 29 (V29), whom he met on Grindr who was, on the date of the interview, 18 years of age. NUNEZ claimed they just talked but had not “hooked up.” NUNEZ admitted, when asked, that V29 sent NUNEZ sexually explicit images when he was a minor. NUNEZ stated that he corresponded with V29 via Snapchat or Grindr and that V29 was one (1) of NUNEZ’s Snapchat contacts under the username “miggie” or “miggie.” NUNEZ stated that V29 turned 18 in February 2020, and they were talking in December 2019. NUNEZ admitted that he received some sexually explicit material from V29 when he was a minor and knew V29 was a minor and added, “but he said he was going to turn 18 so...” NUNEZ added that they were going to wait until V29 was 18 years old to hangout “so we never met and then all this Corona stuff happened.” NUNEZ admitted, when asked, that he and V29 exchanged sexual graphic photographs back and forth. NUNEZ claimed V29 informed NUNEZ he was 17 after a few days of correspondence; however, they continued to exchange sexually explicit images with each other after NUNEZ learned V29 was a minor.³

16. In addition, during the federal search warrant numerous items were seized from NUNEZ’s residence including NUNEZ’s cellular telephone, an Apple iPhone XR which is manufactured in China. A video file, **4B8CD41D-6BA9-48C5-97E6-7442091CE232.mov**, was found in a private photo vault in the phone. The aforementioned 38 second video file appears to be visually the same as **IMG_1686.MOV**, previously referenced in paragraph 7, the video file sent by the SUBJECT to NUNEZ on July 31, 2019, which depicted the sodomy of V12, a minor, by the SUBJECT.

³ At this time, the true identity of V29 is not known to law enforcement and law enforcement cannot confirm if V29 was a minor in December 2019.

17. Conversations between NUNEZ and other suspected minors were found on a HP laptop computer seized from NUNEZ's residence on June 18, 2020. For example, an individual, SUSPECTED MINOR VICTIM 30 (V30) was listed as a contact of **marcern7**⁴ (NUNEZ). V30 provided Skype with a date of birth which would have made the user 16 years of age on March 20, 2013.⁵ A Skype conversation between V30 and **marcern7** (NUNEZ) transpired between March 20, 2013, and March 12, 2014. The conversation on March 20, 2013, when V30 would have been 16 years of age based on the date of birth provided to Skype, read, in part, as follows:

- V30: i wanna get into an art college after hs
- NUNEZ: your in high school still?
- V30: lol yupp
- V30: unfortunately
- NUNEZ: how old are you?
- V30: how old do u think?
- NUNEZ: um idk? Lol
- V30: guess <ss type="tongueout">:P</ss>
- NUNEZ: 17?
- V30: 16
- NUNEZ: oh wow
- V30: hahaha youngest junior
- NUNEZ: very young lol
- V30: hahaha
- V30: i hope i didn't scare u
- NUNEZ: lol no i like them young <ss type="wink">)</ss>
- V30: hahaha
- V30: y's that?
- NUNEZ: tight asses <ss type="wink">)</ss>
- V30: virgin actually
- NUNEZ: even better :P
- NUNEZ: i would you
- NUNEZ: fuck you

4 In the laptop seized from NUNEZ's residence, account information was found for Skype Name "marcern7" including the full name of the user, "marc nunez."

5 Law enforcement has not yet been able to identify the user of V30.

- V30: u'll have to come get me
- NUNEZ: i would <ss type="wink">)</ss>
- V30: come on vacay here
- NUNEZ: where?
- V30: Anguilla

18. The conversation between **marcern7** (NUNEZ) and V30 continued, and on April 12, 2013, when V30 still would have been 16 years of age based on the Skype contact date of birth, the following conversation transpired, in part:

- V30: I took some pics though
- NUNEZ: hot ;P
- NUNEZ: can i see?
- V30: Cource
- NUNEZ: <ss type="smile">:</ss>
- V30: just need to figure out how
- NUNEZ: what?
- V30: P@t€H shared a file: **WP_20130412_004.jpg**^[6]
- V30: das ma load from the other day
- NUNEZ: oh ok
- NUNEZ: yummy
- V30: glad u like it
- NUNEZ: so hot

19. The conversation between **marcern7** (NUNEZ) and V30 continues and on March 5, 2014, when V30 would have been 17 years of age based on the Skype contact date of birth, the following conversation transpires, in part:

- V30: but trust me, I'm getting hard just looking at ut proof pic
- NUNEZ: lol damn
- V30: ur telling me
- V30: i can feel my precum seeping out of me
- NUNEZ: i wish i could see <ss type="wink">)</ss>

⁶ Law enforcement have not been able to retrieve the file **WP_20130412_004.jpg**.

- V30: P@t€H R1chy shared a file: **WP_20140219_006.jpg** [image file depicting a post pubescent male wearing boxer shorts that state on the elastic band, in part, “papi.” The fabric around the genitalia appears to be discolored, possibly from some moisture or ejaculate.]
- NUNEZ: hot <ss type="wink">)</ss>
- V30: btw
- V30: guess who got a jockstrap <ss type="wink">)</ss>
- NUNEZ: you did
- V30: hahaha yupp
- V30: i can wear it for u if u want
- NUNEZ: please do
- V30: want a few pics to go with it?
- NUNEZ: yess!!
- V30: will you send some for me too?
- NUNEZ: i can cam for you <ss type="wink">)</ss>
- V30: but then it doesn't seem fair to you
- NUNEZ: why not?
- V30: cuz u'll be on cam n i won't
- NUNEZ: i will tease you for a bit <ss type="wink">)</ss>
- V30: fine
- V30: <ss type="smile">)</ss>
- V30: i can live with that
- NUNEZ: lol i know <ss type="wink">)</ss>
- V30: will u be able to talk?
- NUNEZ: probably noy
- V30: oh, ok <ss type="sad">:</ss>
- V30: i'm just curious
- NUNEZ: about?
- V30: how you sound
- NUNEZ: oh lol
- NUNEZ: maaybe later
- V30: promise?
- V30: <ss type="smile">)</ss>
- NUNEZ: yeah
- V30: k
- V30: P@t€H R1chy shared a file: **WP_20131213_001.jpg** [The file is an image file depicting a post pubescent male from the chest to just below his knees, wearing a BIKE jock strap that has white elastic around the waist,

black fabric around the penis and testicles and black elastic on the buttocks.]

- NUNEZ: damn they are taking forever lol
- V30: really? Jezz
- NUNEZ: hot!!!
- V30: here are a few more
- V30: P@t€H Rlchy shared a file: **WP_20140217_019.jpg** [The file is an image file depicting a post pubescent male's mid-section and leg with his erect penis exposed out of the top of his BIKE jock strap that has white elastic around the waist, black fabric around his testicles.]
- NUNEZ: damn taking so long again lol
- V30: why does that always happen?
- NUNEZ: yummy <ss type="wink">)</ss>
- V30: glad you like them
- V30: you are soo hot

20. Another conversation between NUNEZ and another suspected minor was also identified on the aforementioned a HP laptop computer that was seized from NUNEZ's residence on June 18, 2020. The individual, SUSPECT MINOR VICTIM 35 (V35), was listed as a contact of **marcern7** (NUNEZ). V35 provided Skype with an unconfirmed date of birth which would have made the user 29 years of age in October 2012; however, V35 claimed during a conversation with NUNEZ to be 17 years of age in October 2012.⁷ A Skype conversation between V35 and **marcern7** (NUNEZ) transpired between October 8, 2012, and April 8, 2013. Between October 10, 2012, and October 11, 2012, V35 stated he was 17 years of age. The conversation, in part, is as follows:

- V35: can i see your cock
- NUNEZ: sure you can if i can see yours
- V35: yea send me a pic
- NUNEZ: you first
- NUNEZ: whats your age?

⁷ Skype information is provided by the user and the date of birth provided is not confirmed. The true identity and age of V35 is not known to law enforcement.

- V35: 17 u
- NUNEZ: 20
- NUNEZ; want to just cam?
- V35: i wanna see it first
- NUNEZ: marc nunez shared a file: **WP_000012.jpg**^[8]
- NUNEZ: now you
- V35: [POSSIBLE TRUE NAME OF MINOR] shared a file: **Photo on 10-10-12 at 7.57 PM.jpg**^[9]
- V35: that's huge
- NUNEZ: thanks lol
- V35: r u horny
- NUNEZ: you have a nice one
- NUNEZ: yeah i am
- V35: can u give me like 5-10 minutes and then we can jack off
- NUNEZ: sure i can
- V35: :PPP
- NUNEZ: you a top or bottom?
- V35: depends on the cock
- NUNEZ: what if it was me?
- V35: mhhm i would let you top
- V35: r u a top or bottom
- NUNEZ: depends
- V35: what fo u prefer
- NUNEZ: top
- V35: me 2
- V35: do u like to eat ass
- V35: or rim
- NUNEZ: yes i do
- NUNEZ: if it is nice
- V35: what if its harry <ss type="tongueout">:P</ss>
- NUNEZ: let me see yours
- V35: k
- V35: let me see yours 2
- NUNEZ: ok send a pic

8 Law enforcement have not been able to retrieve the file **WP_000012.jpg**.

9 Law enforcement have not been able to retrieve the file **Photo on 10-10-12 at 7.57 PM.jpg**.

- V35: [POSSIBLE TRUE NAME OF MINOR] shared a file: **Photo on 10-10-12 at 8.12 PM.jpg**^[10]
- NUNEZ: marc nunez shared a file: **0629110328.jpeg**^[11]
- V35: hot <ss type="tongueout">:P</ss>
- NUNEZ: yeah i would eat it
- NUNEZ: lol
- V35: nice XP
- NUNEZ: haha plus i like young guys
- V35: with big cocks <ss type="tongueout">:P</ss>
- NUNEZ: yes lol
- V35: how big r u btw
- NUNEZ: 7.5
- NUNEZ: you?
- V35: 7

CONCLUSION

21. Based on the above information, I believe that **Marc NUNEZ** possessed child pornography, in violation of Title 18 United States Code § 2252(a)(4)(B), (b)(2).

WHEREFORE, I request that a no bail arrest warrant be issued for **Marc NUNEZ**.

I declare under penalty of perjury that the statements above are true and correct to the best of my knowledge and belief.

s/

Christine Brital, Special Agent
Homeland Security Investigations

SWORN AND SUBSCRIBED TO BEFORE ME TELEPHONICALLY
THIS 30th DAY OF NOVEMBER, 2020.



HON. JOSEPH C. SPERO
Chief United States Magistrate Judge

¹⁰ Law enforcement have not been able to retrieve the file **Photo on 10-10-12 at 8.12 PM.jpg**.

¹¹ Law enforcement have not been able to retrieve the file **0629110328.jpeg**.